In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 1083

HARRY C. DANIELS, d/b/a HARRY C. DANIELS AND CO.,
PETITIONER

v.

UNITED STATES OF AMERICA AND EZRA TAFT BENSON,
SECRETARY OF AGRICULTURE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AND THE SECRETARY OF AGRICULTURE IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (Pet. 15–21) is reported in 242 F. 2d 39.

JURISDICTION

The judgment of the court of appeals was entered on March 14, 1957, and a timely petition for rehearing was denied on April 2, 1957. The petition for a writ of certiorari was filed on June 13, 1957. The juris-

diction of this Court is invoked under 28 U. S. C. § 1254 (1).

QUESTIONS PRESENTED

The Packers and Stockyards Act makes it unlawful for any person to carry on business as a market agency on a public stockyard unless he is registered with the Secretary of Agriculture (7 U. S. C. 203). The Act authorizes the Secretary, if he finds after notice and hearing that a registered marketing agency has violated any provision of the Act, to suspend the registrant "for a reasonable specified period" (7 U. S. C. 204). In the present case the Secretary found after a hearing that petitioner, who was registered as a market agency on a public stockyard, had repeatedly violated provisions of the Packers and Stockyards Act, and the Secretary suspended petitioner's registration for a period of four months. The questions presented are:

(1) Whether the suspension ordered by the Secretary is a harsh and oppressive sanction.

(2) Whether the court of appeals erred in denying petitioner's request that the proceeding be remanded to the Secretary for the purpose of receiving additional evidence.

STATEMENT

Petitioner is registered with the Secretary of Agriculture under the Packers and Stockyards Act as a market agency to buy and sell livestock on a commission basis at the St. Louis National Stock Yards, Na-

tional Stock Yards, Illinois (R. 3, 7).[1] The Judicial Officer[2] of the Department of Agriculture found, on the basis of the evidence adduced before the Hearing Examiner, that petitioner (1) improperly handled and used shippers' proceeds, (2) improperly charged shippers for feed and shed pen facilities not furnished to the shippers and over-charged for feed, and (3) failed to furnish reasonable selling services (R. 314–332). The Judicial Officer suspended petitioner's registration for four months as a market agency for his improper handling and use of shippers' proceeds and improper charges for feed and shed pens (R. 331–332). The Judicial Officer also ordered the petitioner to cease and desist from engaging in those practices and from failing to furnish reasonable selling services (R. 331–332).

This is the third proceeding against petitioner with respect to his improper handling and use of shippers' proceeds. In a proceeding against petitioner in 1945 petitioner admitted that during the year 1944 he had used shippers' proceeds for his personal benefit and stipulated that he would "cease and desist from using for his personal use and benefit funds in his possession or control belonging to owners and consignors of livestock consigned to him for sale on a commission basis, would immediately set up a separate bank account in which he would deposit the gross proceeds

[1] The record references are to the printed transcript of record filed in the court below.

[2] The Judicial Officer acted for the Secretary of Agriculture pursuant to authority delegated to the Judicial Officer. 10 F. R. 13769; 11 F. R. 177A–238; 18 F. R. 3219, 3648; 19 F. R. 74.

received from the sale of livestock handled on a commission basis, said separate account to be designated as 'Shippers' Proceeds Account' or a similar identifying designation, [and] that he would draw on such account only for payment of the net proceeds to the person or persons entitled thereto and to obtain therefrom the sums due him as compensation for his services and for such sums as may be required to pay all legal charges against consignors of livestock * * *."[1]

On October 5, 1953, the Judicial Officer found that during the period from 1949 to 1950 petitioner had on various occasions withdrawn shippers' proceeds from the Shippers' Proceeds Account for purposes of his own and, in addition, that in 176 instances the petitioner had improperly used shippers' proceeds funds to extend credit to certain buyers of livestock. *In re Harry C. Daniels, d/b/a Harry C. Daniels & Co.*, P. & S. Docket No. 1980, 12 Agriculture Decisions 1113, 1116–1117. Petitioner thereby created shortages in the Shippers' Proceeds Account in various amounts up to $7,039.51. *Ibid.* Petitioner was ordered to cease and desist from using shippers' proceeds for purposes of his own and to keep a Shippers' Proceeds Account in "strict conformity" with the regulations issued under the Act (9 CFR § 201.42). *Id.* at p. 1122.

Three weeks after this cease and desist order was issued, petitioner commenced the improper handling and use of shippers' proceeds involved in this case.

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[1] See, *In re Harry C. Daniels, d/b/a Harry C. Daniels & Co.*, P. & S. Docket No. 1980, 12 Agriculture Decisions 1113, 1118.

On 115 different days during the period from October 26, 1953, through August 27, 1954, he drew 272 livestock drafts on his Shippers' Proceeds Account, aggregating over a third of a million dollars, endorsed the shippers' names on the drafts without authorization, deposited such drafts in his personal bank account, and paid the shippers with checks drawn on his personal bank account (R. 320–321). These activities not only violated the two prior cease and desist orders, but also the Act (7 U. S. C. 205, 208, 213 (a)) and the regulations issued under the Act (9 CFR §§ 201.40–201.42). Because of the normal delay in the presentation for payment of the checks drawn on petitioner's personal bank account, petitioner was enabled to use the shippers' proceeds for purposes of his own. On some occasions petitioner had insufficient funds in his personal bank account to cover his personal checks, which the bank would not have honored except for the deposit of shippers' proceeds in petitioner's personal bank account. On other occasions there were insufficient funds in petitioner's personal bank account to honor all of the outstanding checks to shippers drawn on his personal account (R. 321, 323–324).

Petitioner admittedly overcharged shippers in the amount of $2,166.92 for hog feed (R. 327) and, as the Judicial Officer found, on many occasions he charged shippers for feed and shed pens which were not furnished and overcharged shippers for feed (R. 321–322, 327–328). Complainant's Ex. 15 consists of 75 pages of data, with approximately 46 names to the

tion warranting review by this Court. It is, therefore, repectfully submitted that the petition for a writ of certiorari should be denied.

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